

EXHIBIT E

From: [Desa Ballard](#)
To: [Macaulay, Angus H.](#)
Cc: [Beth Cogan](#); [Clark, Brittany N.](#)
Subject: RE: (Emily Doe v. American University of Antigua Inc. 4:20-cv-04445-SAL) Subpoenas [IWOV-NPCOL1.FID2269110]
Date: Wednesday, August 25, 2021 10:43:54 AM
Attachments: [image001.png](#)

{EXTERNAL EMAIL}

I'm not sure you have authority to "instruct them not to respond" but you can certainly tell them you are filing a motion (copy me) and I will respond that I have no objection to them responding after the motion is heard.

db

From: Macaulay, Angus H. <AMacaulay@nexsenpruet.com>
Sent: Wednesday, August 25, 2021 10:30 AM
To: Desa Ballard <desab@desaballard.com>
Cc: Beth Cogan <Beth@desaballard.com>; Clark, Brittany N. <BClark@nexsenpruet.com>
Subject: RE: (Emily Doe v. American University of Antigua Inc. 4:20-cv-04445-SAL) Subpoenas [IWOV-NPCOL1.FID2269110]

Desa – we disagree.

We are filing a Motion for a Protective Order and/or to Quash. We will then send a copy of the filed Motion to the subpoena recipients (with a copy to you) and instruct them not to respond to their respective subpoenas until Judge Dawson rules on the Motion.

Angus

Angus H. Macaulay
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Columbia, SC 29201
PO Drawer 2426 (29202)
T: 803.253.8279, F: 8037271465
AMacaulay@nexsenpruet.com
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From: Desa Ballard <desab@desaballard.com>

Sent: Wednesday, August 25, 2021 10:01 AM
To: Macaulay, Angus H. <AMacaulay@nexsenpruet.com>
Cc: Beth Cogan <Beth@desaballard.com>; Clark, Brittany N. <BClark@nexsenpruet.com>
Subject: RE: (Emily Doe v. American University of Antigua Inc. 4:20-cv-04445-SAL) Subpoenas [IWOV-NPCOL1.FID2269110]

{EXTERNAL EMAIL}

Angus:

Subpoenas to third parties are within the scope of the order set forth in ECF 24. We were allowed written discovery to your client and 60 days to conduct limited jurisdictional discovery. Rule 26 certainly encompasses discovery on parties and third persons, because the protective provisions of Rule 26 apply both to parties and persons. See specifically Rule 26 c (1) and b(2).

The subpoenas were mailed late Friday about 7:30 pm (nothing was hand-delivered or emailed) and our email to you was early Monday so you had notice before it was possible for any of the third party recipients could have received the subpoenas. Certified mail, return receipt, restricted delivery slows down delivery considerably so you were given notice in advance. I thought we would have e mailed them to you on Friday but one of our staff (Beth) was working from home because her son had been exposed to COVID, and another person in the office was assisting with mailing out (serving) the hard copies from the office. Beth was home with her son, and I think it was after 7:30 (when the subpoenas were dropped in the mail) when Beth had closed out for the day, so the email was sent Monday morning. Had I known there was a delay I would certainly have insisted on email on Friday. Regardless, you received the email before the subpoenas were actually delivered to the recipients (which may not have happened yet, we have not received any green cards back).

It would have been my preference, of course, to email you on Friday and did not realize the email did not go out on Friday, although I did realize that Beth was working from home and it was well after hours before the subpoenas were placed in the US mail.

Beth's email on Monday used the term "served" inappropriately because the subpoenas were not "served" until receipt, so you had notice in advance.

Please be assured we had no intent to hide the fact of the subpoenas from you. They were (and are) permitted under ECF 24. Rest assured we will email you a copy before placing any additional subpoenas in the mail.

db

From: Macaulay, Angus H. <AMacaulay@nexsenpruet.com>
Sent: Tuesday, August 24, 2021 7:09 PM
To: Desa Ballard <desab@desaballard.com>

Cc: Beth Cogan <Beth@desaballard.com>; Clark, Brittany N. <BClark@nexsenpruet.com>
Subject: RE: (Emily Doe v. American University of Antigua Inc. 4:20-cv-04445-SAL) Subpoenas [IWOV-NPCOL1.FID2269110]

Desa,

We object to each of these third party subpoenas and request that you immediately pull them back or otherwise direct the third parties not to respond at this time.

First, you violated Federal Rule of Civil Procedure 45. We received copies and notice of these subpoenas on Monday, August 23rd. Beth's email states that all of them were served on Friday, August 20th. FRCP 45(a)(4) expressly states that a subpoena must be first served on each party before it is served on the third party. You have failed to comply with the Federal Rules of Civil Procedure by issuing and serving these third party subpoena duces tecum days before providing reasonable notice and a copy to us.

Second, subpoenas duces tecum are not "written discovery" contemplated by Judge Dawson's text order. The text order expressly states that Plaintiff had a limited time period in which to conduct "written discovery." Subpoenas to third parties who are not parties to this lawsuit do not constitute written discovery and are outside the limited discovery permitted on personal jurisdiction.

For these and other reasons, we ask that you immediately claw back the subpoenas issued to third parties, and direct them not to respond or provide any documentation pending the Court's ruling on our to-be-filed motion to quash and/or for protective order.

Please also consider this communication as meet and confer pursuant to Local Rule 7.02 (D.S.C.). If we do not hear from you by **noon tomorrow, August 25, 2021**, we will assume that you do not wish to meet and confer or otherwise engage on the issue of the third party subpoenas, and we will file our motion with the Court. We will also assume that you do not intend to pull the subpoenas back, and we will move forward by reaching out to the third parties directly and ask that they not produce any documents or otherwise respond to the subpoenas during the pendency of our motion.

Angus

Angus H. Macaulay
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From: Beth Cogan <Beth@desaballard.com>

Sent: Monday, August 23, 2021 9:53 AM

To: Macaulay, Angus H. <AMacaulay@nexsenpaltet.com>; Clark, Brittany N. <BClark@nexsenpaltet.com>

Cc: Desa Ballard <desab@desaballard.com>

Subject: (Emily Doe v. American University of Antigua Inc. 4:20-cv-04445-SAL) Subpoenas

{EXTERNAL EMAIL}

Good morning,

Please see the attached subpoenas that were served on Friday afternoon.

Kindest Regards,

-Beth

Beth Cogan, Paralegal
Ballard & Watson, Attorneys at Law
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